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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,254	07/09/2001	Sadik Tuzun	1193-PCTUS00	4185

7590

11/19/2003

IP Department  
Schnader Harrison Segal & Lewis  
1600 Market Street 36th Floor  
Philadelphia, PA 19103

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 11/19/2003

6506707

17

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/807,254

Applicant(s)

TUZUN ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 9, 12, 14, 24-39, 42, 44-48, 76, 78-86, 89-91, 93, 96-99, 114, 117 and 5070 is/are rejected.
- 7) ☐ Claim(s) 6-8 and 122 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Continuation of Disposition of Claims: Claims pending in the application are 5-8,12,20,39,41-48,50,70-76,78-86,89-91,93,96-99,114,117,119,122 and 2226.

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's arguments filed 8/29/03 have been fully considered but they are not persuasive. Based on Applicant's amendment new 35 USC 102 and 103 rejections are cited below.

I. Rejection of claims 5,12,14,22,119 under 35 USC 102 (b) as being anticipated by ES '821 will be maintained in light of amendment filed 8/29/03. Applicant argues that instant composition is used as a pesticide; whereas, EP '821's composition is used as a skin tonic. Applicant argues that since the function of the prior art composition differs from that of the instant composition, the art rejection over EP '821 should be withdrawn. Examiner argues that in a claim to a composition a statement regarding the composition's intended use has no patentable weight. Therefore, whether the composition is used as a skin tonic as opposed to a pesticide has no patentable significance.

II. Rejection of claims 5,14,22 under 35 USC 103(a) as being obvious over JP '056 will be maintained in light of amendment filed 8/29/03. Applicant argues that instant composition is used as a pesticide; whereas JP '056's composition is used as a deodorant. Applicant argues that since the function of the prior art composition differs from that of the instant composition, the art rejection over JP '056 should be withdrawn. Examiner argues that in a claim to a composition a statement regarding the composition's intended use has no patentable weight. Therefore, whether the

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composition is used as a deodorant as opposed to a pesticide has no patentable significance.

### III. 35 USC 102(b) Rejection

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5,12,22,119 are rejected under 35 U.S.C. 102(b) as being anticipated by Chastain et al (US 5153229; 10/6/92). Chastain teaches an oil in water emulsion for killing fungi and bacteria comprising 1000 ppm d-limonene (essential oil), water, corn or soybean oil (vegetable oils) and an emulsifier. See abstract. In a claim to a composition, a statement to the derivation of a component has no patentable significance. See column 23 compositions I and J.

### IV. 35 USC 103(a) Rejection

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5,20,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rusitzka teaches the inclusion of paraffin, bactericide and essential oils (thymol and camphor) to an oil-in-water emulsion. Rusitzka does not teach 1-1000 ppm bactericide. It would have been obvious to one having ordinary skill in the art to determine the

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optimum amount of bactericide. One would have been motivated to do this in order to make a composition that would have been effective in controlling bacteria

V. Objected to and Allowable Claims are maintained as on record in paper 14.

VI. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

#### ***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

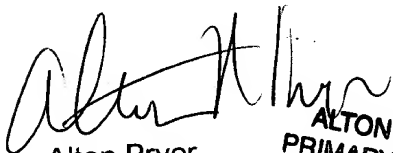
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is 703 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-

1235.



Alton Pryor  
Primary Examiner  
AU 1616

**ALTON N. PRYOR**  
**PRIMARY EXAMINER**